

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SIERRA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015070032

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 26, 2015, Student filed a request for due process hearing (complaint) naming Sierra Unified School District.

On July 2, 2015, District, filed a Notice of Insufficiency (NOI) as to Student's Issue One of his complaint. No opposition was filed in response to District's request.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.¹ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.²

¹ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

² See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”³ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁴ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁵

DISCUSSION

Student’s Issue One of his complaint alleges District offered services for the 2014-2015 school year and failed to provide these services. The complaint offers no factual claims to support this issue. The complaint does not identify any services or describe what services were to be provided by District. As such, Student’s Issue One of his complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.⁶

Student’s proposed resolution is that District provide Student with compensatory education and home-hospital or nonpublic school placement. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student’s complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. Issue One of Student’s complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

³ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁴ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁵ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

⁶ Student’s complaint contains three issues for hearing, and District’s NOI only challenged Issue 1. Issues 2 and 3 are deemed sufficient by operation of law.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues Two, and Three in Student's complaint.

DATE: July 7, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings